

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 PIROUZ SEDAGHATY, et al.,)

7 Defendants.)

) No. 05-60008-2-HO

) January 19, 2010

) Eugene, Oregon

8
9 TRANSCRIPT OF ORAL ARGUMENT

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

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1 (Tuesday, January 19, 2010; 11:22 a.m.)

2 P R O C E E D I N G S

3 THE CLERK: This is the time set for Criminal
4 05-60008-2, *United States of America versus Pirouz*
5 *Sedaghaty*, hearing on defendant's motion to compel the
6 government to utilize the Mutual Legal Assistance Treaty
7 on behalf of Mr. Sedaghaty and/or to issue letters
8 rogatory.

9 THE COURT: Give me just a second, Counsel.
10 Counsel, I am familiar with your papers. This morning,
11 I also received another motion to compel the government
12 to utilize the Mutual Legal Assistance Treaty on behalf
13 of the defendant concerning Saudi Arabia. And so I
14 think I'd like to -- if you comments, I'd rather have
15 comments on both of them today. There is similar
16 issues. And if there is a difference, talk about that
17 for me, please. If you have something more to say on
18 this, fine.

19 MR. WAX: We were surprised, Your Honor, to see
20 the government arguing that what we're seeking is not
21 exculpatory.

22 What we need from Saudi Arabia and Egypt goes
23 directly to the very core of this case.

24 THE COURT: Let me ask with regard to Egypt,
25 Mr. El-Fiki --

1 MR. WAX: Yes.

2 THE COURT: -- what defense would his statement
3 make -- let's say he -- say I gave the money, the term
4 I'd probably use is God, I gave the money for charity
5 purposes, and what defense does that make to the
6 elements of the crimes charged here, the tax charge and
7 the money charge?

8 MR. WAX: We anticipate that the government
9 will be arguing that the fact that Mr. El-Fiki wired
10 money to Ashland, Oregon, from an account in London,
11 when he is based in Egypt, is suspicious and part of the
12 overall plan of al-Haramain, whether al-Haramain Ashland
13 or al-Haramain Saudi, to do something inappropriate with
14 the money.

15 We just received this morning a report from the
16 person the government calls an expert, Evan Kohlmann,
17 and while I did not have time to digest it, what he has
18 written about with respect to the way in which
19 al-Haramain conducted its business, and this is
20 primarily al-Haramain Saudi, suggests to me even more
21 clearly than it did when we filed the pleading that the
22 way in which the money was routed will be a part of the
23 government's case with respect to the element of
24 willfulness.

25 Mr. El-Fiki's statement, as reflected in the

1 FBI 302 report that was provided to us, explains that
2 there was nothing inappropriate, nefarious,
3 conspiratorial, or anything bad in any way about the
4 fact that he sent the money here. And it explains what
5 the -- I'll call it advertisement, solicitation, you
6 know, for donations was what it said, and the choice
7 that it gave to donors to send money either to the U.S.
8 or to Saudi.

9 THE COURT: What information do you have that
10 makes you believe that Mr. El-Fiki would be a witness,
11 that he would testify?

12 MR. WAX: He provided a full and detailed
13 statement to the Egyptian authorities at the request of
14 the United States government that was participated in by
15 the United States government, we're confident, in
16 multiple ways. We know that they were permitted to
17 listen to and view the interrogation. We're confident
18 that they communicated with the Egyptian authority,
19 Secret Police, whoever it was who actually conducted the
20 interview in terms of explaining the area that they
21 wanted covered.

22 THE COURT: What do I do with the language in a
23 case like *Westerdahl* that appears to limit relief like
24 this to a case in which there is prosecutorial
25 misconduct?

1 MR. WAX: Well, I don't believe, Your Honor,
2 that that is what *Westerdahl* says, nor any of the other
3 cases. My reading of *Westerdahl* from the outset and --

4 THE COURT: It uses the words "where the fact-
5 finding process is intentionally distorted by
6 prosecutorial misconduct, and the defendant is thereby
7 denied a fair trial."

8 MR. WAX: Well, there are other portions in the
9 opinion, Your Honor, which do not require a finding of
10 misconduct.

11 What I believe the Ninth Circuit said there and
12 in the subsequent cases is that when the government uses
13 its processes for the gathering of information on its
14 behalf, and refuses to do so for the defendant, that is
15 the intentional distortion of the fact-finding process
16 that the Ninth Circuit discussed. Nothing more than
17 that need be shown.

18 We don't need to show any bad faith on the part
19 of the government. We don't need to show anything other
20 than they have this authority, the executive authority
21 to grant immunity in *Westerdahl*, the executive authority
22 to use the MLAT process in a case of this nature.

23 When they use it on their own behalf, when they
24 are requested to use on it on behalf of the defense,
25 with the type of showing that was made in *Westerdahl* and

1 the type of showing that's made here of the relevance
2 and exculpatory nature of the evidence, and they refuse,
3 that's enough. *Westerdahl* says -- and the cases that
4 have followed it -- say that's enough. They may not do
5 that.

6 And if they refuse, then the court can either
7 preclude the testimony that they have obtained or
8 dismiss the case. We don't need to show anything more,
9 as I read those cases.

10 THE COURT: The cases also talk about timing,
11 and we've got a June trial date. This case is over four
12 years old. Why does this come now?

13 MR. WAX: Well, Your Honor, as we explained
14 earlier on in the case, we made significant efforts to
15 locate Mr. El-Fiki, we were unsuccessful. It took us
16 quite a while to finally get in contact with him and to
17 make the effort to speak with him. That process was
18 finished -- I don't recall the exact date, perhaps
19 several months before we filed the pleading. We
20 exhausted our efforts to obtain this information on our
21 own.

22 With respect to the information that we're
23 seeking in Saudi Arabia, as the court is aware, we have
24 been going through -- I don't recall -- 40,000 -- I
25 mean, many, many, many, many tens of thousands of e-mails,

1 once we eventually received the discovery and were able
2 to convert it into a usable format, and then spend the
3 time going through and finding the relevant documents.

4 THE COURT: But El-Fiki's name is not a new
5 one.

6 MR. WAX: No. With respect to El-Fiki, we made
7 efforts which took us quite a while to try to obtain the
8 information on our own. I don't believe that we were
9 late in any way. And with respect to the use of this
10 MLAT process, our understanding is that goes far more
11 rapidly than the letter rogatory process. And it seems
12 to us that with respect --

13 THE COURT: And what do I do with the language
14 that says under these treaties that's for the
15 signatory's use, not to be used in this situation? I
16 don't know that it has the negative, but it's for the
17 signatory's use. The cases talk about that, at least.

18 MR. WAX: Yes, Your Honor. And what we're
19 requesting is your directing the government to utilize
20 the process on behalf of the defense.

21 We find it very disturbing that the government
22 did not even respond to the information that we first
23 provided to them informally when we sought their
24 assistance on an informal basis before we filed this
25 pleading. We were told by the government prosecutors in

1 this case that they could not, under any circumstances,
2 utilize the MLAT process on our behalf.

3 We obtained information, which we attached to
4 our pleading as an exhibit, that that is just simply not
5 the case. We provided to the court and to the
6 government a pleading in which the government
7 prosecutors did what is not being done in this case and
8 that is agree, under the direction of the court as
9 reflected in the pleadings in that case, to utilize the
10 MLAT process through what was called the walled off
11 investigators and prosecutors.

12 That's what we're asking the court to direct
13 the government to do here. And if it refuses to do so,
14 then under *Westerdahl*, this court has the authority to
15 either refuse to permit the government to introduce the
16 evidence it has obtained through the MLAT and rogatory
17 process, or the next step is to dismiss the indictment.

18 So the cases which say that the MLAT is not
19 available to the defense, we're not challenging those.
20 But what we're pointing out is that in none of those
21 cases was the court presented with the argument that we
22 presented here based on the Ninth Circuit's holdings in
23 *Westerdahl* and the cases that have followed it in the
24 intervening 20 years.

25 Under the *Westerdahl* analysis, we don't utilize

1 the MLAT process ourselves. The government does it for
2 us. The government designates an investigator outside
3 of the prosecution team, the government designates a
4 prosecutor outside of the prosecutor team. Those
5 investigators and prosecutors are walled off from the
6 process --

7 THE COURT: I understand the process.

8 MR. WAX: Okay. That's what we're requesting.
9 That's what *Westerdahl* says is required when you have
10 the purely executive decision for immunity, which we see
11 as parallel and indistinguishable from the purely
12 executive authority here under the MLAT.

13 They've obtained information. They are not
14 cooperating. We say direct them to, or preclude their
15 use of the evidence.

16 THE COURT: Mr. Cardani, what about this
17 argument that this is exculpatory on the willfulness
18 element?

19 MR. CARDANI: Does the court wish to hear a
20 little bit about -- any responses to counsel's comments
21 about use in other cases?

22 THE COURT: I'm going to let you both exhaust
23 yourself. But I'm just trying to get to my question,
24 but if you have something more, that's fine.

25 MR. CARDANI: Okay. Well, I'll go right to the

1 court's question then.

2 Regarding the exculpatory nature of
3 Mr. El-Fiki's conduct, it's true that his conduct is the
4 central aspect of the -- forms one of the building
5 blocks of the indictment. It is his money that we're
6 talking about in the indictment, that is true. So his
7 conduct, his statements, are certainly relevant from an
8 evidentiary standpoint. And if he were an American
9 citizen or if he were here, he'd probably end up on both
10 of our witness lists. But that's a different analysis
11 from do we need to use extraordinary powers of the court
12 to secure testimony because it's exculpatory?

13 And the -- our response talks about it's one
14 thing to say that Mr. El-Fiki had no intent to fund
15 fighters, mujahideen, with his donation. But it's also
16 clear from that statement that he's never met our
17 defendant, Mr. Sedaghaty, nor has he met the
18 co-defendant, Mr. Al-Buthe, nor have there been any
19 conversations or communications that we're aware of
20 between them.

21 So it's one thing to say Mr. El-Fiki had a
22 certain intent, but that intent is not exculpatory
23 vis-à-vis this defendant. And, of course, Mr. El-Fiki
24 could never comment on this defendant's intent and
25 knowledge, prohibited by the rules of evidence.

1 So that's the point we made in our response
2 that it's certainly relevant but it doesn't rise to the
3 level of being exculpatory in our view.

4 THE COURT: All right. And is the question
5 closer with Mr. Al-Sanad from Saudi Arabia?

6 MR. CARDANI: Yes.

7 THE COURT: All right. Is there more you would
8 like to say about that?

9 MR. CARDANI: About Mr. Sanad?

10 THE COURT: Yes.

11 MR. CARDANI: Well, the first thing I'd like to
12 say about that request is we got it Friday afternoon and
13 we have not --

14 THE COURT: I just got it this morning. So if
15 you want more time to respond, that's fine.

16 MR. CARDANI: We do want more time to respond.
17 But --

18 THE COURT: Then don't bother with it. When
19 you respond, I will also want to know whether or not
20 they really need certified copies of these documents
21 that apparently you both have.

22 MR. CARDANI: Well, I'd like to give the court
23 a preview of where I think we're going on a response to
24 this because --

25 THE COURT: All right.

1 MR. CARDANI: -- half of it I've got off the
2 top of my head. Mr. Wax spends a great period of time
3 asking the court to order us to use the MLAT that we
4 have with Saudi Arabia to get all this evidence and
5 secure things.

6 The fact of the matter is we do not have an
7 MLAT with Saudi Arabia. There is none. So most of this
8 motion is mooted by the fact that we have not negotiated
9 a treaty with the Kingdom of Saudi Arabia to get this.
10 We do -- we'd have to default then to -- any kind of
11 evidence gathering process involved, the court would
12 have to default to rogatories. And that's where I think
13 we need to have some discussion.

14 But I will say that we have used our own
15 processes internally to try to get background
16 information relating to these receipts that are
17 appended. These are not new to us. They're not new to
18 the defense. Everybody has known about them for quite
19 some time. We tried to track these things down and get
20 certified copies and to find out some of the background
21 behind them, and we have been unable to get anywhere in
22 Saudi Arabia ourselves. So if the court ultimately
23 decides -- we'll answer this: If the court decides to
24 consider rogatory, we should be under no false sense of
25 illusion that we're going to get anything from Saudi

1 Arabia, certainly not timely or at all in terms of that.

2 THE COURT: It's up to them how they treat
3 that --

4 MR. CARDANI: Yes.

5 THE COURT: -- then?

6 MR. CARDANI: Yes. It's a discretionary
7 procedure. Rogatories, of course, go from the court
8 through our State Department to a judge in Saudi Arabia.

9 THE COURT: Yes.

10 MR. CARDANI: And we just kind of facilitate
11 that request. But it is a discretionary request by
12 people in Saudi Arabia.

13 I don't know how the court wishes to go here,
14 but the *Westerdahl* argument --

15 THE COURT: Well, I -- I think maybe I'll step
16 back now. I tried to get to the points that are -- I
17 want to make sure I'm listening and not thinking about
18 the issues that I came up with when I was studying this
19 yesterday. But, Mr. Wax, did you have more you wanted
20 to say about the initial motions, the ones on the
21 calendar today?

22 MR. WAX: No, Your Honor, I think I've covered
23 it.

24 THE COURT: Thank you.

25 MR. CARDANI: The *Westerdahl* argument, Judge,

1 to us it's more like apples and oranges. In *Westerdahl*
2 you're talking about immunity. And that case, which is
3 a fairly extraordinary case, and has not been
4 implemented to any degree or frequency, fortunately,
5 because it requires what the court just pointed out, a
6 showing of, in essence, misconduct by the prosecution in
7 implementing immunity to certain witnesses that say a
8 certain set of facts but refusing to offer immunity when
9 there may be another set of facts that may be directly
10 exculpatory. And that is seen as abusive, unfair, due
11 process issues, constitutional issues. And in that
12 limited circumstance, there may be -- it may be
13 necessary for a hearing to determine if the government
14 has committed misconduct. A far cry from what we have
15 here. We're not talking about immunity. We're talking
16 about evidence gathering.

17 We have got nothing from our MLAT with Egypt.
18 So it's not like we even used our processes available to
19 get one side of the picture from Egypt through an MLAT
20 and there may be this whole other pile of information
21 that's exculpatory. We haven't implemented that
22 procedure with respect to our Egyptian Mutual Legal
23 Assistance Treaty.

24 But more fundamentally, I'm not going to repeat
25 everything in the brief, but this is an executive branch

1 tool. The court cases that are cited, especially the
2 cases out of the Eastern District of Virginia, are very
3 instructive, they're recent. Judge Ellis and other
4 judges on that bench have an extensive background in
5 this. And they've issued opinions that are reported in
6 the *Federal Supplement*. And I'm not aware of any case
7 where the judge has ordered the government to use its
8 MLAT authority to get information. And the courts are
9 very hesitant to do so, recognizing that the terms of
10 the MLATs are negotiated between the governments, do not
11 involve the courts, and it's an executive dialogue.

12 And the language in the MLAT at issue here,
13 Egypt, specifically prohibit it being used as an
14 evidence gathering device for private parties like the
15 defendant here. The *Jefferson* and *Rosen* cases are the
16 ones that are very good in providing the background on
17 that.

18 Now, with respect to what Mr. Wax says about
19 the government does this anyways, we checked into the
20 facts of the Ohio case, which *El Hindi*, I think, is the
21 case, and he attached a letter where there was some
22 indication that the government was going to use its MLAT
23 authority for the defense. I don't have chapter and
24 verse, but I talked to the people that were somewhat
25 involved in this back in Washington.

1 The government's office that deals with
2 interfacing between foreign governments and our
3 government and the State Department is under the
4 Department of Justice called Office of International
5 Affairs, OIA. And they break down to particular
6 regions. And I spoke with the people that deal with
7 this part of the world. They are very aware of this.
8 And what they said in that case, *El Hindi*, is that
9 although this paperwork was executed by the U.S.
10 Attorney's Office and components of the department, no
11 one ever consulted the central authority, OIA, about
12 this. Once they heard about this, they vetoed it. They
13 said this is not what is done. It is outside of
14 protocol and it never happened.

15 If the court wishes a statement or testimony to
16 support that, we would be happy to provide it but it was
17 never done. And it shouldn't be done here.

18 The other comments I have are with respect to
19 the alternative request and that's for the letters
20 rogatory. Can I address that now?

21 THE COURT: Yes.

22 MR. CARDANI: On the letters rogatory, as I
23 read it, they want the court to issue letters rogatory
24 to Egypt to get the Egyptian courts to help secure the
25 presence of witnesses here. These are not American

1 citizens. These are Egyptian citizens, outside the
2 compulsory process of the United States government and
3 this court. So it would require some direct involvement
4 by the Egyptian courts. And from what I read, they have
5 been unable to gain the cooperation of Mr. El-Fiki.
6 There is no indication that he would voluntarily jump on
7 a plane, come here, and testify. So that's kind of a
8 huge issue in terms of just issuing letters of rogatory
9 asking Egypt to help secure that.

10 He also -- the defendant also asked for letter
11 rogatory assistance to do a Rule 15 deposition in Egypt,
12 I presume of Mr. El-Fiki and the other two. The same
13 cases I cited earlier, the *Jefferson* case out of the
14 Eastern District of Virginia, very instructive. After
15 acknowledging that MLATs are not appropriate tools for
16 the defense discovery, did indicate that letters
17 rogatory can be helpful to secure witness testimony, but
18 only where it is shown that the witness will agree to
19 testify at a foreign deposition and provide material
20 information.

21 In that case, the judge did not issue a
22 full-blown letter of rogatory but did issue a letter
23 rogatory to the foreign government essentially asking
24 would these people testify at a deposition willingly.
25 And I think that if that's done here, foreign law needs

1 to be considered. I don't know what Egyptian law
2 provides someone in Mr. El-Fiki or the other two's
3 situation, what type of rights they have under Egyptian
4 law, but that would have to be delved into, I think.
5 But the judge in that case, *Jefferson*, did issue a
6 limited rogatory with a 60-day status check, not asking
7 the court to secure the depositions but, in essence,
8 asking whether they'd be willing to testify at a foreign
9 deposition.

10 One big thing that we're very concerned about
11 that has been touched upon by the court and that's the
12 timing of all of this. And on the Egyptian side of the
13 house, this all involves testimony involving Mr. El-Fiki
14 and records concerning his transaction. We issued a
15 subpoena to al-Haramain in the summer of 2003.
16 Mr. Matasar was counsel at the time, and he responded by
17 giving us records roughly in the fall of 2003, which
18 included some of this very material, the El-Fiki
19 material, the transactional information, perhaps some of
20 the e-mails that they're pulling out of the computers
21 now. Some of those came over in hard copy to us from
22 them way back in 2003. It's no mystery what this case
23 is all about and who Mr. El-Fiki is.

24 Moving forward, once Mr. Sedaghaty was indicted
25 and eventually came back to the United States in 2007,

1 the very first batch of discovery we provided in
2 December of 2007 included all of the -- the relevant
3 El-Fiki material, and also these computer hard drives
4 were turned over. So for two years now -- for more than
5 two years, but through discovery purposes for over two
6 years, this material has sat in the defendant's
7 possession. It is only now, two years later, that we're
8 getting these requests to go talk to El-Fiki, or to the
9 MLAT authority, or to get records certified, it's very
10 late in the game. And the court knows that we've gone
11 to great lengths to secure a June 2010 trial date. The
12 court took two weeks on its calendar, set a series of
13 preceding motions, a number of dominos have to fall, a
14 lot of hearings, a lot of witnesses to come here, that's
15 all been set up, and we're in that process now of
16 heading towards trial.

17 And so our comment is if the court wants to
18 consider some type of letter rogatory to try to get this
19 thing going, I would ask that the court be mindful of
20 the trial date and not let any kind of delay in the
21 rogatory process act as an impediment to moving towards
22 trial.

23 Judge Ellis recognized this in the *Jefferson*
24 case that the trial was, I think, fairly imminent. And
25 the judge, as I said, said I'll issue a letter rogatory,

1 we'll have a status check in 60 days, but we're not
2 going to let this extend the trial. And if there is no
3 response to it from the country requested, then we're
4 going to deny the request for a Rule 15 deposition and
5 move forward to trial.

6 I also would like to add that the State
7 Department -- even a letter of rogatory is a very
8 cumbersome process. The courts have described this
9 process as extremely cumbersome, dilatory, expensive.
10 And the State Department, who does coordinate with the
11 foreign governments, we've asked them about Egypt's
12 track record. Because it is a discretionary vehicle,
13 either through an MLAT or through a letter rogatory, and
14 I quoted a State Department comment that came back to me
15 for purposes of this hearing: The United States has
16 enjoyed limited success in obtaining admissible evidence
17 in a timely manner from Egypt. The U.S. government has
18 made few requests which are generally grounded on the
19 Mutual Legal Assistance Treaty, successes have been
20 infrequent.

21 So, again, no illusions here, if we go down the
22 road of foreign evidence gathering, we know from our own
23 work, and this is law enforcement to law enforcement,
24 that it is extremely difficult to work with foreign
25 governments to get cooperation. We have to deal with

1 the logistics of translation, and then there has to be a
2 formal handoff from the State Department to the
3 equivalent of their State Department, going down to
4 their ministry of whatever department is involved in the
5 request, to their courts, consideration made, and then
6 back around. So it's going to take an awful long time,
7 time that we really don't have right now if we want to
8 preserve this June trial date, which we want to do at
9 all costs. I think that's all I have.

10 THE COURT: Thank you. Mr. Wax.

11 MR. WAX: One second, please.

12 (Discussion held off the record between
13 co-counsel.)

14 MR. WAX: Your Honor, to the extent that the
15 timing of our request is an issue for you, there are a
16 few additional comments that I would make. If the
17 timing is not an issue for you, then I don't have
18 anything to add.

19 THE COURT: I do think it's something I need to
20 consider.

21 MR. WAX: All right. Then let me say the
22 following: You are aware that from the outset of the
23 commencement of the case in this court back in 2007,
24 late 2007, there has been an ongoing dispute about the
25 manner in which the government has handled the computer

1 discovery. We have been through that. It's on the
2 record. But I think that that is critical to understand
3 how long it took us to get into a position to understand
4 what was relevant in terms of some of the financial
5 documents, what we could attack in terms of some of the
6 financial documents, and what we wanted to embrace in
7 terms of some of these financial documents.

8 Before we could understand that aspect of the
9 case, it was our judgment that it would have been
10 incompetent as defense counsel, it would also have been
11 imprudent of me as the person responsible for money, to
12 send investigators off to Egypt and to Saudi Arabia to
13 try to gather information from Mr. El-Fiki and some of
14 these records that are in the motion that we filed on
15 Friday. You just can't do that. We couldn't do it
16 without understanding the case.

17 And we did not get to the point where we could
18 understand the case until the summer of 2009 because of
19 the exceedingly difficult problem we had in getting to
20 the electronic data.

21 THE COURT: Have you had someone in Egypt?

22 MR. WAX: Mr. Teesdale has been there, and
23 Mr. Teesdale has made the effort to contact Mr. El-Fiki
24 and this pleading is a result of his efforts and his
25 inability to obtain what we believe we need and what the

1 government was able to obtain through whatever contacts
2 it has with the Egypt Secret Police and the Egyptian
3 government that conducted the interrogation or interview
4 of Mr. El-Fiki at the behest of the United States
5 government.

6 In terms of timing, the government has
7 certainly provided us with a lot of material, but as you
8 also recall, they announced at the outset that this is
9 not an open discovery case. We received another batch
10 of discovery this morning. And we're appreciative of
11 that.

12 As I mentioned, my quick review of the report
13 from Evan Kohlmann, the person they call an expert
14 that's in here, that says things that heighten the
15 relevance and exculpatory aspect of the information
16 we're seeking.

17 This material also includes a document called
18 al-Haramain Islamic Foundation audit trail. And the
19 date on it is May 1, 2008. We're concerned if this
20 date, May 1, 2008, is something that was in the
21 government's possession now for roughly 20 months, why
22 we're just getting it today. Among other things, it
23 contains information that directly contradicts some of
24 the written statements that we were previously provided
25 from the accountant Tom Wilcox about the core aspect of

1 this case as it relates to the purchase of a property in
2 Springfield and accounting. May 1, 2008. If Mr. Wilcox
3 printed it out and prepared it then, and the government
4 didn't have it, well, it's hard to understand that. If
5 the government printed out that and they are just giving
6 it to us now, with the exculpatory information in it, it
7 seems to me that the government is not in a particularly
8 good position to be complaining about any delay on our
9 part as we have been trying to understand and to access
10 and then to understand what is in the voluminous
11 electronic records that are on the hard drives that were
12 recovered.

13 THE COURT: Have you had that discussion with
14 Mr. Cardani?

15 MR. WAX: No, I just looked at this -- I mean,
16 we were given it just before the court proceeding began.
17 We were looking at it for a moment outside at the table,
18 and I was just going back through it here in the
19 courtroom.

20 THE COURT: All right. Anything further?

21 MR. CARDANI: Those came out of al-Haramain
22 hard drives, which were given to them a long time ago.
23 We can have discussions outside the court about the
24 dates and the ins and outs of it, but that's been in
25 their possession, at least in hard drive form, for quite

1 some time.

2 THE COURT: All right. I'll give you something
3 in writing, gentlemen. Thank you.

4 MR. CARDANI: Oh, Judge, one other matter. Did
5 the court wish to address the need for a classified
6 hearing at the March -- our next hearing, and this is in
7 March, and it's to address some of the legal issues on
8 the motion to suppress?

9 THE COURT: I have your written material. I
10 think that's satisfactory. I'm frankly waiting to hear
11 with more specificity exactly what we're going to be
12 talking about then, what material we're going to see.

13 MR. CARDANI: All right. In coming into that
14 hearing, we're not anticipating the need for any kind of
15 classified evidence unless the court orders otherwise,
16 and that would require logistical support from the court
17 security officer.

18 THE COURT: Well, now, as you all know, this
19 case has gone on long enough we lost our wonderful court
20 security officer, and I've got to meet a new person. I
21 guess she's -- Erin has already transferred to her job
22 in San Francisco. And so what I'm going to do is
23 request, when it's on the schedule, that we get the new
24 one out so that we can get a -- some working
25 relationship there. All right. Thank you very much.

1 MR. CARDANI: Thank you, Judge.

2 THE CLERK: Court is in recess.

3 MR. MATASAR: Your Honor, can I just ask, when
4 you said you were waiting for some more information, do
5 you want us to make a further submission of the
6 specific --

7 THE COURT: Something informal to tell me
8 specifically where you are going. You've given me
9 principles -- legal principles and so on. It's sort of
10 hard to apply those in the ether sphere.

11 MR. MATASAR: That's fine, Your Honor. And
12 might -- when you said the court security officer is
13 coming, would that be just a meeting with the court
14 or --

15 THE COURT: Yes.

16 MR. MATASAR: You wouldn't want us to do it
17 then, you'd want us to do it separately?

18 THE COURT: I might make that in conjunction.

19 MR. MATASAR: Thank you.

20 (The proceedings were concluded at 12:01 p.m.)
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1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 8th day of February, 2010.

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10
11
12 /s/ Deborah Wilhelm
13 Deborah Wilhelm, RPR
14 Certified Shorthand Reporter
15 Certificate No. 00-0363
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